REMARKS

Claims 27-50 were pending in the present application.

Claims 27-50 were rejected in the March 7, 2007 Office Action.

No claims have been allowed.

Claims 27, 39 and 43-50 are amended herein.

Claims 27-50 remain in the present application.

Reconsideration of the claims is respectfully requested.

I.   AMENDMENTS TO THE CLAIMS

Independent Claims 27 and 39 are amended to make clear that the selected identity server process is associated with the new call connection until the new call connection is ended, as described in the present application. ("Once such a server is selected, the server…allocates one of the call identity numbers in the range it manages. The call identity number is thereafter used to identify the call. When the call ends, the call identity number is released by locating the proper server from the call identity itself, as each server manages a fixed range of numbers. The server application then makes the number available by marking it as unallocated." Present Application, page 36, lines 1-7.) Dependent Claims 43-50 are each amended to correct an error in the preamble. The Applicant respectfully submits that no new matter is added by these amendments.

II.   REJECTION UNDER 35 U.S.C. § 103

In the March 7, 2007 Office Action, the Examiner rejected Claims 27-31 under 35 U.S.C. §103(a) as being unpatentable over U. S. Patent No. 6,671,259 B1 to *He, et al.* ("*He*") in view of U. S. Patent No. 2003/0005350 A1 to *Koning, et al.* ("*Koning*"), Claims 32-38 under 35 U.S.C. §103(a) as being unpatentable over *He* and *Koning*, and further in view of U. S. Patent Application Publication No. 2004/0039820 A1 to *Colby, et al.* ("*Colby*"), Claims 39-43 and 47-50 under 35 U.S.C. §103(a) as being unpatentable over *He* and *Koning*, and further in view of U.S. Patent Application No. 5,754,959 to *Ueno, et al.* ("*Ueno*") and Claims 44-46 under 35 U.S.C. §103(a) as being unpatentable over *He, Koning* and *Ueno*, and further in view of *Colby*. Of these, Claims 27 and 39 are independent. These rejections are respectfully traversed for the reasons discussed below.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. (*MPEP § 2142; In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992).) The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. (*MPEP § 2142; In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984).) Only when a *prima facie* case of obviousness is established does the burden shift to the Applicant to produce evidence of nonobviousness. (*MPEP § 2142; In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993).) If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the Applicant is entitled to grant

of a patent. (*In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).)

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must be both found in the prior art and not based on the Applicant's disclosure. (*MPEP § 2142*).

In order to establish obviousness by combining references there must be some teaching or suggestion in the prior art to combine the references. (*Arkie Lures, Inc. v. Gene Larew Tackle, Inc.*, 119 F.3d 953, 957, 43 U.S.P.Q.2d 1294, 1297 (Fed. Cir. 1997) ("It is insufficient to establish obviousness that the separate elements of an invention existed in the prior art, absent some teaching or suggestion, in the prior art, to combine the references."); *In re Rouffet*, 149 F.3d 1350, 1355-56, 47 U.S.P.Q.2d 1453, 1456 (Fed. Cir. 1998) ("When a rejection depends on a combination of prior art references, there must be some teaching, or motivation to combine the references.").)

Evidence of a motivation to combine prior art references must be clear and particular if the trap of "hindsight" is to be avoided. (*In re Dembiczak*, 175 F.3d 994, 50 U.S.P.Q.2d 1614 (Fed. Cir. 1999) (Evidence of a suggestion, teaching or motivation to combine prior art references must be "clear and particular." "Broad conclusory statements regarding the teaching of multiple

references, standing alone, are not 'evidence.'"); *In re Roufett*, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998) ("[R]ejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be 'an illogical and inappropriate process by which to determine patentability.'").)

The Applicant respectfully submits that neither *He* nor *Koning*, either alone or in combination, discloses, teaches or suggests "a load sharing group, <u>selecting one of a first and second</u> <u>identity server processes</u> to allocate a call identity value to a new call connection according to a load distribution algorithm, <u>wherein the selected identity server process is associated with the new call</u> <u>connection until the new call connection is ended, wherein said first identity server process</u> <u>comprises a first primary-backup identity server group</u>, comprising, a first primary identity server application...and a first backup identity server application," as recited by amended Claim 27.

As stated by the Examiner, "He does not specifically teach of a backup server for a first primary server." Office Action, page 4. Instead, *He* discloses server groups, each of which includes multiple servers able to "perform the largely same functions and provide largely the same services." *He*, col. 3, lines 33-34. Depending on the load circumstances, a client may be switched from being served by a first server in the group to a second server in the group "during the course of the connection." *He*, col. 8, lines 28-34. No mention is found of the failure of a server in the server group; however, it may be assumed based on the implied interchangeability of the servers that the

load balancing (LB) server could simply take the failed server out of the rotation for selection. Thus, *He* shows a single set of interchangeable servers in a server group with no indication that each server in the server group cannot function in place of any other server within the server group. Because the servers appear to be interchangeable, there is no motivation to provide additional backup for any one of the servers in the server group of *He*.

In contrast, independent Claim 27, as amended, recites that a "selected identity server process is associated with the new call connection until the new call connection is ended." Thus, the claimed identity server processes are not interchangeable during a call, and an identity server process other than the selected identity server process is unable to replace the selected identity server process during the call. Because of this, the claimed invention provides for identity server processes that each include a backup identity server application that may take over if the primary identity server application fails or malfunctions during the call.

Similar to *He*, *Koning* shows a server group for providing a particular service. However, *Koning* teaches that a single, primary server is used to provide the service, as opposed to *He* which teaches multiple servers performing a same service. ("The system also includes a first failover server group that includes a first server that is capable of performing a first service and a second server capable of performing the first service...The system also includes a second failover server group that includes a third server capable of performing a second service and a fourth server capable of performing the second service." *Koning*, Abstract.) Thus, *Koning* provides a backup for its single server that is capable of performing a particular service in case the primary server fails. There is no

reason to combine this backup server of *Koning* with the server group of *He* because *He*'s server group already has built-in redundancy with respect to servers performing the same service. Including an additional set of backup servers for *He* would simply add cost without providing any benefit because the functioning servers in *He*'s server group could presumably take over for a failed server as easily as a backup server could, in addition to being able to provide the service regardless of the status of the other servers.

There must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference or to combine reference teachings. There is nothing in *He* or *Koning* that suggests modifying *He* with the teachings of *Koning*. In fact, as stated above, such a modification would simply add cost to the system of *He* without adding any benefit. The suggestion to combine the two references comes from the Applicant's invention. As stated in the *In re Roufett* opinion, it is not proper to select elements from the disclosure of the Applicant's invention and then "piece together" the elements from the prior art references. There must be a clear and particular suggestion to combine the two references if the trap of "hindsight" is to be avoided. Therefore, for at least this reason, a *prima facie* case of obviousness against Claim 27 has not been presented with reference to the cited art, either alone or in combination.

Similar to Claim 27, independent Claim 39, as amended, recites "a load sharing group, selecting one of a first and second identity server processes to allocate a call identity value to a new call connection according to a load distribution algorithm, wherein the selected identity server

process is associated with the new call connection until the new call connection is ended, wherein said first identity server process comprises a first primary-backup identity server group, comprising, a first primary identity server application...and a first backup identity server application." Accordingly, for the reasons discussed above in connection with Claim 27, Claim 39 is also not made obvious by the cited art. Therefore, Applicant respectfully submits that this rejection should now be withdrawn.

Dependent Claims 28-38, which depend from independent Claim 27, and dependent Claims 40-50, which depend from independent Claim 39, are also not made obvious by the cited art because they include the limitations of their respective base claims and add additional elements that further distinguish the art. Therefore, the Applicant respectfully submits that these rejections should now be withdrawn. However, the Applicant reserves the right to dispute in future Office Action responses the appropriateness and the applications of the cited references to the dependent claims of the present application, including the right to dispute assertions made by the Examiner in the March 7, 2007 Office Action.
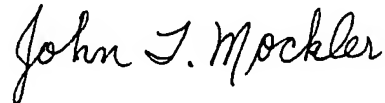
SUMMARY

For the reasons given above, the Applicant respectfully requests reconsideration and allowance of the pending claims and that this application be passed to issue. If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *jmockler@munckbutrus.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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